

STATE OF MICHIGAN
COURT OF APPEALS

WARREN EDUCATION ASSOCIATION and
JAMES R. FOUTS,

UNPUBLISHED
April 12, 2007

Charging Parties-Appellants,

v

No. 265643
MERC
LC No. 01-000136

WARREN CONSOLIDATED SCHOOLS,

Respondent-Appellee.

Before: Owens, P.J., and Neff and White, JJ.

OWENS, J. (*dissenting*)

I respectfully dissent. The Michigan Employment Relations Commission's decision was supported by competent, material, and substantial evidence on the whole record, and it did not fail to give due deference to the hearing referee's credibility determination concerning the testimony of Judith Locher.

In fact, the hearing referee's credibility determination concerning the testimony of Locher was entitled to very little deference because the hearing referee credited only that part of Locher's testimony that supported the referee's ultimate conclusion, and ignored that part that was contradictory. Specifically, the referee stated: ". . . I discredit Walsh's testimony that Hancock [respondent's attorney] and Jouppi, who were among those present when Locher arrived, were there only for the grievance meeting[]" while crediting Locher's testimony that Walsh planned to deliver the letter before the grievance meeting started. However, both Fouts and Locher testified that respondent's attorney left after the grievance meeting concluded, and before the reprimand letter was delivered, indicating that at least Hancock was there only for the grievance meeting, contrary to the referee's findings based on Locher's other testimony. This testimony by Fouts and Locher supported the testimony of Walsh that the referee had discredited.

Therefore, the Commission did not improperly disregard the ALJ's credibility determination. I would affirm the Commission's decision because it is supported by competent, material and substantial evidence on the whole record, and not just part of the record, as were the ALJ's findings.

/s/ Donald S. Owens

